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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 EDWARD B. SPENCER,

12 Plaintiff,

13 v.

14 D. LOPEZ,

15 Defendant.

Case No. 1:20-cv-01203-JLT-BAK (SKO) (PC)

**ORDER DENYING PLAINTIFF'S  
MOTION FOR RECONSIDERATION OF  
MAGISTRATE JUDGE'S RULING**  
(Doc. 49; Doc. 52)

16 **I. INTRODUCTION**

17 Spencer filed a "Motion to Strike His Deposition from the Records." (Doc. 40.) Lopez  
18 filed an opposition to the motion. (Doc. 41.) Spencer did not file a reply. The assigned magistrate  
19 judge issued an order denying Spencer's motion to strike deposition. (Doc. 49.) Following an  
20 extension of time, Spencer timely filed objections to the magistrate judge's order pursuant to Rule  
21 72(a) of the Federal Rules of Civil Procedure. (Doc. 52.)

22 **II. LEGAL STANDARD**

23 Rule 72(a) of the Federal Rules of Civil Procedure provides that non-dispositive pretrial  
24 matters may be referred to and decided by a magistrate judge, subject to review by the assigned  
25 district judge. Fed. R. Civ. P. 72 (a); *see also* Loc. R. 303(c). The district judge shall modify or  
26 set aside any part of the magistrate judge's order which is "found to be clearly erroneous or  
27 contrary to law." Loc. R. 303(f); *see also* 28 U.S.C. § 636(b)(1)(A). Discovery motions are non-  
28 dispositive pretrial motions, which come within the scope of Rule 72(a) and 28 U.S.C.

§ 636(b)(1)(A). Thus, the orders of a magistrate judge addressing discovery motions are subject to the “clearly erroneous or contrary to law” standard of review. *Rockwell Intern., Inc. v. Pos-A-Traction Indus., Inc.*, 712 F.2d 1324, 1325 (9th Cir. 1983). The magistrate judge’s factual determinations are reviewed for clear error, while legal conclusions are reviewed to determine whether they are contrary to law. *United States v. McConney*, 728 F.2d 1195, 1200-01 (9th Cir. 1984), *overruled on other grounds by Estate of Merchant v. CIR*, 947 F.2d 1390 (9th Cir. 1991). “A magistrate judge’s decision is ‘contrary to law’ if it applies an incorrect legal standard, fails to consider an element of [the] applicable standard, or fails to apply or misapplies relevant statutes, case law, or rules of procedure.” *Martin v. Loadholt*, 2014 WL 3563312, at \*1 (E.D. Cal. 2014). “[R]eview under the clearly erroneous standard is significantly deferential, requiring a definite and firm conviction that a mistake has been committed.” *Concrete Pipe & Prod. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 623 (1993) (internal quotation marks omitted); *see also Sec. Farms v. Int’l Bhd. of Teamsters*, 124 F.3d 999, 1014 (9th Cir. 1997).

### III. DISCUSSION

Spencer argues the magistrate judge’s denial of his motion to strike his deposition is erroneous because the magistrate judge “failed to determine whether the Lopez had presented sufficient evidence to mailing to invoke the presumption of receipt, and if so, whether Spencer has presented sufficient evidence of non-receipt to rebut the presumption.” (Doc. 52 at 2.)

A review of the magistrate judge’s factual determinations reveals no clear error. *McConney*, 728 F.2d at 1200-01. Lopez submitted a declaration with his opposition to Spencer’s motion to strike which demonstrates Lopez properly sent notice of the deposition to Spencer. (Doc. 41 at 10.) The magistrate judge’s legal conclusions are not contrary to law. They do not apply an incorrect legal standard, fail to consider an element of the applicable standard, or fail to apply or misapply relevant statutes, case law, or rules of procedure. *Martin v. Loadholt*, 2014 WL 3563312, at \*1 (E.D. Cal. 2014). Consequently, the Court finds no basis to disturb the magistrate judge’s decision to deny Spencer’s motion to strike his deposition.

### IV. ORDER

For the reasons set forth above,

1. Spencer's motion for reconsideration (Doc. 52) of the magistrate judge's May 31, 2022 order is **DENIED**.

IT IS SO ORDERED.

Dated: **August 12, 2022**

  
UNITED STATES DISTRICT JUDGE